UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HULLON GRIGGS,	:	
	:	
Plaintiff,	:	
	:	Civil Action No.: 99-1552 (RMU)
v.	:	
	:	
WASHINGTON METROPOLITAN	:	
AREA TRANSIT AUTHORITY *et al.*,	:	Document Nos.: 43, 44
	:	
Defendants.	:	

MEMORANDUM OPINION

GRANTING THE DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

I. INTRODUCTION

This matter comes before the court on the defendants= motions for summary judgment. In his complaint, the plaintiff, Hullon Griggs, alleges that defendant Officer Doug Haymans, an officer with the Washington Metropolitan Area Transit Authority ("WMATA"), negligently permitted his police canine "Buddy" to attack and bite him. The plaintiff further claims that defendant District of Columbia Metropolitan Police Department (AMPD") negligently supervised and trained Officer Haymans in his use of the police canine. The defendants raise numerous grounds for dismissal in their motions for summary judgment, but the court will address only the argument regarding the plaintiff's failure to provide expert testimony regarding police canine operations, police joint operations, and the related supervision and training. Because of this failure, the court grants summary judgment to the defendants as a matter of law and consequently dismisses the plaintiff's complaint.

II. BACKGROUND

On May 26, 1996, at approximately 4:30 a.m., Hullon Griggs was inside of the Madison Grocery Store, located in Washington, D.C. Griggs Dep. at 12. According to Mr. Griggs, he had used cocaine several hours earlier and then broke into the grocery store to steal beer. *Id.* at 12, 17-18, 22. After the store's alarm began to sound, he moved to the back of the store. *Id.* at 20-21. Noticing through a window that a police car was present, Mr. Griggs allegedly hid under a tarp in a dark corner of the back room and fell asleep until Buddy, the police canine, awoke him. *Id.* at 24-25. Mr. Griggs heard Officer Haymans tell him to put his hands over his head. Because the canine was "on [Mr. Griggs'] arm," Mr. Griggs instead "snatched [Buddy] loose and pushed him back." *Id.* at 26, 32. Mr. Griggs asked Officer Haymans to restrain the canine because it was grabbing or biting him. *Id.* at 27. Officer Haymans did so, and handcuffed Mr. Griggs. *Id.* Mr. Giggs later noticed bite marks and scratches on his arms and legs. *Id.* at 28. Officer Haymans turned Mr. Griggs over to two MPD officers who took him to the precinct and then to a hospital. *Id.* at 35-36.

According to Officer Haymans, he followed standard WMATA procedures in apprehending Mr. Griggs. Haymans Dep. at 65. Pursuant to these procedures, when entering a crime scene, Officer Haymans always first warns that a police canine is about to enter. *Id.* at 61. If there is no response, he enters the space with his police canine and conceals himself while the canine searches the space. *Id.* Buddy, the police canine, is trained to physically apprehend, or "bite and hold," a suspect. *Id.* at 62. Officer Haymans' procedure is to remain concealed until he can see the suspect's hands. *Id.* at 65.

Officer Haymans became involved with the Madison Grocery Store crime scene on May 26, 1996 when he responded to an MPD request for a "Canine search." *Id.* at 67. Before entering the grocery store, Officer Haymans learned from officers at the scene that the suspect had peered out of a window, observed the officers, then retreated back into the darkness. *Id.* at 68, 70. Officer Haymans entered the store and initiated his canine's search while he remained in a safe part of the store. In a dark area, the canine began to pull and bite at a tarp. *Id.* at 75. Once it became apparent that a person was under the tarp, Officer Haymans "ran to the place of cover . . . [and] yelled, '[l]et me see your hands,' to the suspect." *Id.* at 76. Officer Haymans' account of the subsequent events is similar to Mr. Griggs' account. *Id.* at 76-93.

Mr. Griggs, represented by counsel, eventually filed suit against WMATA, Officer Haymans, and the MPD in the Superior Court of the District of Columbia. On June 15, 1999, the defendant WMATA removed the case to the United States district court pursuant to § 81 of the WMATA Compact. D.C. Code § 1-2431(81). On August 31, 1999, this court denied defendant MPD's motion to dismiss. Order dated Aug. 31, 1999. WMATA and Officer Haymans filed a motion to dismiss or, alternatively, for summary judgment on the grounds of sovereign immunity, which this court denied without prejudice on January 28, 2000. Order dated Jan. 28, 2000. On April 6, 2000, this court granted defendant WMATA's motion for reconsideration in part and consequently dismissed WMATA as a defendant in this action. Order dated Apr. 6, 2000. The plaintiff elected to retain no experts for this case. Pl.'s Rule 26(a)(2)(B) Certification.

Two of the counts in Mr. Griggs' complaint have survived. The fist, count two, alleges that Officer Haymans was negligent in his control of his police canine and in

permitting the canine to attack Mr. Griggs. Compl. at 10-11. The second, count three, alleges that the MPD negligently supervised and trained WMATA's police canine and WMATA Officer Haymans. *Id.* at 12-13.

Defendant Haymans moves for summary judgment as a matter of law because the plaintiff has failed to present expert testimony regarding the standard of care for police canine operations. Haymans' Mot. for Summ. J. at 2. Officer Haymans also argues that the court should grant summary judgment because he had qualified immunity to use the level of force necessary to arrest the plaintiff, and because any negligence is barred by the plaintiff's contributory negligence and assumption of risk. *Id.* at 3. Defendant MPD also moves for summary judgment as a matter of law, arguing that the plaintiff has failed to present expert testimony regarding the standards of care for police canine and joint operations and the related supervision and training. MPD's Mot. for Summ. J. at 5-8. The MPD argues that such testimony is necessary to demonstrate that the MPD was negligent in its supervision and training of Officer Haymans. *Id.* The MPD also argues, based on the directives in the court's August 31, 1999 Memorandum Opinion, that the plaintiff cannot prove negligent supervision by the MPD because the plaintiff has no evidence that the MPD was on notice that Officer Haymans behaved in a dangerous or incompetent manner. *Id.* at 2, 9-10; *Griggs v. Wash. Metro. Area Transit Auth.*, 66 F. Supp. 2d 23, 28-29 (D.D.C. 1999). Because the court grants summary judgment as a matter of law pursuant to the defendants' first arguments, the court does not reach the defendants' alternative arguments.[1]

[1] The defendant correctly points out that, in its August 31, 1999 Memorandum Opinion, the court set forth those facts that the plaintiff would have to present to prevail on a vicarious liability theory. MPD's Mot. for Summ. J. at 9-10; *Griggs*, 66 F. Supp. 2d at 28-29 (explaining that for the court to find the MPD liable under a theory of vicarious liability, the plaintiff must show that

III. ANALYSIS

A. Legal Standard for Motion for Summary Judgment

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Diamond v. Atwood*, 43 F.3d 1538, 1540 (D.C. Cir. 1995). To determine which facts are "material," a court must look to the substantive law on which each claim rests. *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 248 (1986). A "genuine issue" is one whose resolution could establish an element of a claim or defense and, therefore, affect the outcome of the action. *Celotex*, 477 U.S. at 322; *Anderson*, 477 U.S. at 248.

In ruling on a motion for summary judgment, the court must draw all justifiable inferences in the nonmoving party's favor and accept the nonmoving party's evidence as true. *Anderson*, 477 U.S. at 255. A nonmoving party, however, must establish more than "the mere existence of a scintilla of evidence" in support of its position. *Id.* at 252. To prevail on a motion for summary judgment, the moving party must show that the nonmoving party "fail[ed] to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322. By pointing to the absence of evidence

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the MPD maintained supervisory control over this investigation, failed to adequately supervise Officer Haymans, and knew or should have known that Officer Haymans behaved in a dangerous or incompetent manner). Nevertheless, the plaintiff's opposition asserts that the defendant is liable based on a vicarious liability theory, but provides no facts in support of this theory except that "[Haymans was] acting at the request of and on behalf of the District of Columbia." Pl.'s Opp'n at 2.

proffered by the nonmoving party, a moving party may succeed on summary judgment. *Id.*

In addition, the nonmoving party may not rely solely on allegations or conclusory statements. *Greene v. Dalton*, 164 F.3d 671, 675 (D.C. Cir. 1999); *Harding v. Gray*, 9 F.3d 150, 154 (D.C. Cir. 1993). Rather, the nonmoving party must present specific facts that would enable a reasonable jury to find in its favor. *Greene*, 164 F.3d at 675. If the evidence "is merely colorable, or is not significantly probative, summary judgment may be granted." *Anderson*, 477 U.S. at 249-50 (internal citations omitted).

B. The Court Grants the Defendants' Motions for Summary Judgment Because the Plaintiff Has Presented No Evidence of the Standards of Care Required for Police Canine and Joint Operations

In order to prevail in this negligence action, the plaintiff must provide expert testimony regarding the standards of care for police canine and joint operations and the related supervision and training. *Toy v. Dist. of Columbia*, 549 A.2d 1, 6 (D.C. 1988). By failing to present expert evidence of the relevant standards of care, the plaintiff has "fail[ed] to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial" *Celotex*, 477 U.S. at 322. Thus, the court grants the defendants' motions for summary judgment.

1. The Elements Required to Prove Negligence

"The plaintiff in a negligence action bears the burden of proof on three issues: 'the applicable standard of care, a deviation from that standard by the defendant, and a causal relationship between that deviation and the plaintiff's injury.'" *Toy*, 549 A.2d at 6 (quoting *Meek v. Shepard*, 484 A.2d 579, 581 (D.C. 1984)). When an allegedly negligent act falls "within the realm of common knowledge and everyday experience," expert

testimony regarding the appropriate standard of care is not necessary. *Dist. of Columbia v. White*, 442 A.2d 159, 164 (D.C. 1982). On the other hand, the plaintiff has a burden to present expert testimony at a trial to establish the standard of care when the ultimate issue involves a subject that is "distinctly related to some science, profession or occupation [so] as to be beyond the ken of the average person." *Dist. of Columbia v. Peters*, 527 A.2d 1269, 1273 (D.C. 1987) (citations omitted); *Hill v. Metro. African Methodist Episcopal Church*, 779 A.2d 906, 910 (D.C. 2001).

> Under the law of the District of Columbia, when expert testimony is required,
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> the expert must clearly articulate and [refer to] a standard of care by which the defendant's actions can be measured . . . . Thus the expert must clearly relate the standard of care to the practices in fact generally followed by [similarly situated parties] or to some standard nationally recognized by such [parties].

Nat'l Tel. Coop. Assoc. v. Exxon Mobil Corp., 244 F.3d 153, 154-55 (D.C. Cir. 2001) (citations omitted). Testimony merely providing the personal opinion of the testifying expert as to what the expert would do in a particular situation is insufficient. *Id.* (citation omitted). Furthermore, internal regulations cannot replace expert testimony. *Clark v. Dist. of Columbia*, 708 A.2d 632, 636 (D.C. 1998). While internal regulations may demonstrate what type of care is ideal, they could be well above the standard of care required to prevail in a negligence action. *Id.*

Whether or not an expert is required in a plaintiff's case is a critical issue. On this point, the District of Columbia Court of Appeals recently noted, "over the last decade or so . . . the requirement [of expert testimony] has been applied more broadly to a variety of situations . . . the substantially smaller number of cases falling within the common knowledge exception." *Hill*, 779 A.2d at n.1 (quoting *Dist. of Columbia v. Hampton*, 666 A.2d 30, 35-36 (D.C. 1995)). Furthermore, the District of Columbia Court of Appeals

has required plaintiffs to present expert testimony regarding standards of care for relatively common situations. *E.g., Dist. of Columbia v. Freeman*, 477 A.2d 713, 719 (D.C. 1984) (requiring expert testimony for safety of intersection); *Hill*, 779 A.2d at 910 (requiring expert testimony regarding methods of crowd control in church).

2. The Plaintiff Cannot Prevail Because He Has Failed to Provide the Necessary Expert Testimony

Both defendants argue that the plaintiff's case should be dismissed because he has failed to retain an expert who can provide testimony regarding the standards of care for police canine and joint operations, and the related police supervision and training.[2] MPD's Mot. for Summ. J. at 5-8; Haymans' Mot. for Summ. J. at 2; *see* Pl.'s Rule 26(a)(2)(B) Certification. This evidence is critical for the plaintiff's case because in a negligence action, the plaintiff must establish (1) the applicable standard of care, (2) that the defendants deviated from that standard, and (3) a causal relationship between this deviation and the plaintiff's injury. *Toy*, 549 A.2d at 6. The defendants correctly argue that without an expert, the plaintiff cannot prove at least two of these essential elements: the relevant standards of care, and the defendants' deviation from these standards. MPD's Mot. for Summ. J. at 2; Haymans' Mot. for Summ. J. at 2; *Celotex*, 477 U.S. at 322.

Courts generally have required expert testimony regarding the standard of care in cases alleging negligent police operations, supervision, or training. *E.g. Peters*, 527 A.2d at 1273 (requiring expert testimony for training of police regarding confrontations with

[2] The plaintiff's expert disclosure reports were due by February 21, 2000. Order dated Oct. 12, 1999; Order dated Feb. 1, 2000; FED. R. CIV. P. 26(a)(2). On January 13, 2000, the plaintiff filed a Rule 26(a)(2)(B) certification stating that he has retained no expert witnesses. Pl.'s Rule 26(a)(2)(B) Certification. The time for filing an expert disclosure has passed. FED. R. CIV. P. 26(a)(2)(C).

people under the influence of narcotics); *White*, 442 A.2d at 164-65 (requiring expert testimony concerning adequacy of the MPD's weapons safety training); *Holder v. Dist. of Columbia*, 700 A.2d 738, 741-42 (stating that police use of force is an issue beyond the ken of the average juror). In a case similar to the case at bar, the plaintiff alleged that a police officer was negligent in using force and that the District of Columbia was negligent in supervising and training that officer. *Etheridge v. Dist. of Columbia*, 635 A.2d 908, 917-18 (D.C. 1993). The court explained that the plaintiff, to prevail, must present evidence of the officer's training and expert testimony regarding the recognized standards of care for police training, supervision, and use of force. *Id.* Given this precedent and other cases requiring expert testimony regarding the standard of care for police use of force; the court determines that expert testimony is required to demonstrate the standards of care in police canine and joint operations, and the MPD's training and supervision of Officer Haymans. *Holder*, 700 A.2d at 741-42; *Peters*, 527 A.2d at 1273; *White*, 442 A.2d at 164-65; *Etheridge*, 635 A.2d at 917-18.

The inability to establish a standard of care for an issue beyond the ken of the average person is fatal to a lawsuit. *Toy*, 549 A.2d at 9. Without a standard of care, a jury would have to engage in speculation, which the D.C. Court of Appeals prohibits. *Id.* The plaintiff's failure to provide expert testimony regarding the standards of care recognized in police joint and canine operations and police supervision and training would force a jury to engage in speculation as to the appropriate standards of care. Because such speculation is prohibited, the plaintiff cannot establish the standards of care and thus cannot prove negligence. *Nat'l Tel. Coop. Assoc.*, 244 F.3d at 154-55.

In his opposition, the plaintiff fails to counter the many pages of legal analysis on these issues submitted by the defendants. Without citing a single case, the plaintiff's *only* opposition to the defendants' arguments is:

> The standard of care in the use of canines to track and apprehend criminal suspects is set forth in Metro Transit Police General Order Number 319 effective September 1, 1993 (attached hereto and incorporated herein as Exhibit 1) and Metropolitan Police Department General order 306 effective April 28, 1981 (attached hereto and incorporated herein as Exhibit 2). Plaintiff alleges that Defendants violated the standard of care in the use of a canine in the apprehension and arrest of Plaintiff by failing to take all action necessary to stop the canine from attacking Plaintiff after apprehension.

Pl.'s Opp'n at 1. Contrary to the plaintiff's argument, the District of Columbia Court of Appeals has ruled that internal regulations, while informative, cannot substitute for expert testimony on the standard of care because the regulations may well be *above* the standard. *Clark*, 708 A.2d at 636. If a regulation requires more care than the standard of care requires, a person who violated the regulation may be subject to administrative sanctions, but is not necessarily negligent in the District of Columbia. *Id.*

As the plaintiff never argues that he in fact has disclosed or even hired an expert, the defendants' arguments raise no disputed issues of fact.[3] Consequently, because the plaintiff cannot establish the requisite standards of care, the court grants the defendants'

[3] Though the parties' statements of material facts are not necessary for this analysis, the court notes that the plaintiff's statement of disputed material facts includes argument and fails to cite to specific portions of the record. It thereby fails to comply with Local Civil Rules 7.1(h), 56.1, and the court's scheduling and procedures order which invokes Rule 7.1(h) and relevant case law. Order dated June 11, 2001 ¶ 5. Interestingly, in his statement of disputed material facts, the plaintiff explicitly concedes that he has no standard-of-care expert. Pl.'s Disputed Facts ¶ 2. The plaintiff also argues that the testimony of MPD Sergeant Louis White "certifies the standard of care." *Id.* ¶ 2. As Sergeant White testified that he is familiar with MPD's internal police regulations, which the plaintiff intends to introduce as the standard of care, the court infers that the plaintiff intends to use Sergeant White to introduce WMATA's and MPD's general orders. *Id.*; Pl.'s Opp'n at 1. The notion that the plaintiff would offer Sergeant White's testimony for this purpose is odd given that Sergeant White testified in a deposition that Officer Haymans' use of the canine while apprehending the plaintiff was perfectly *appropriate*. White Dep. at 5-6, 35-37.

motions for summary judgment as a matter of law. *Toy*, 549 A.2d at 9; *Celotex*, 477 U.S. at 322.

IV. CONCLUSION

For all these reasons, the court grants the defendants' motions for summary judgment. An order directing the parties in a manner consistent with this Memorandum Opinion is separately and contemporaneously executed and issued this 30th day of September 2002.

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Ricardo M. Urbina
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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	:	
Plaintiff,	:	
	:	Civil Action No.: 99-1552 (RMU)
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Defendants.	:	

ORDER

GRANTING THE DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

For the reasons stated in this court's Memorandum Opinion separately and contemporaneously executed and issued this 30th day of September 2002, it is

ORDERED that the defendants' motions for summary judgment are both **GRANTED**; and it is

FURTHER ORDERED that this action is **DISMISSED**.

SO ORDERED.

Ricardo M. Urbina
United States District Judge

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